

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee/Cross-Appellant,

v

AUBREY BYRON WEBB,

Defendant-Appellant/Cross-
Appellee.

UNPUBLISHED

August 9, 2005

No. 248962

Saginaw Circuit Court

LC No. 02-022306-FH

Before: Cooper, P.J., and Jansen and Hoekstra, JJ.

COOPER, P.J. (*dissenting*).

I must respectfully dissent from the majority opinion of my colleagues. At trial, defense counsel argued that defendant did not have a weapon. However, there was sufficient evidence in the record for the jury to determine that, if he did have a weapon, it was at his place of business and therefore, he was not carrying a concealed weapon in violation of MCL 750.227(2).¹ Defendant was an independent vendor who sold novelties and clothing from a booth he rented in retail space leased by one of the complainants. In light of this evidence, defense counsel's failure to request an instruction regarding the place of business exception was clearly reversible error. Had the jury been properly instructed and the jury believed the evidence, defendant would have been acquitted of CCW. I would, therefore, affirm the trial court's decision to vacate defendant's CCW conviction and to resentence defendant.

/s/ Jessica R. Cooper

¹ MCL 750.227(2) provides:

A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law